



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-111]

**Vertical Metal File Cabinets from the People's Republic of China: Initiation of
Countervailing Duty Investigation**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 20, 2019.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang at (202) 482-5484, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On April 30, 2019, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition (Petition) concerning imports of vertical metal file cabinets (file cabinets) from the People's Republic of China (China) filed in proper form on behalf of Hirsh Industries LLC (the petitioner).¹ The CVD Petition was accompanied by an antidumping duty (AD) Petition concerning imports of file cabinets from China.

¹ See Petitioner's Letter, "Vertical Metal File Cabinets from the People's Republic of China – Petition for the Imposition of Antidumping and Countervailing Duties," dated April 30, 2019 (the Petition).

Between May 2 and 15, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.² The petitioner filed responses to this request on May 6 and 16, 2019.³

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of file cabinets in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing file cabinets in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.⁴

² See Commerce's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Vertical Metal File Cabinets from the People's Republic of China: Supplemental Questions," dated May 2, 2019 (General Issues Supplemental Questionnaire); Petitioner's Letter, "Petition for the Imposition of Countervailing Duties on Imports of Vertical Metal File Cabinets from the People's Republic of China: Supplemental Questions," dated May 2, 2019 (CVD Supplemental Questionnaire); *see also* Memoranda, "Phone Call with Counsel to the Petitioner," dated May 8, 2019 (May 8, 2019 Memorandum); and, "Phone Calls with Counsel to the Petitioner," dated May 15, 2019 (May 15, 2019 Memorandum)..

³ See Petitioner's Letters, "Vertical Metal File Cabinets from the People's Republic of China - Petitioner's Supplement to Volume I Relating to General Issues," dated May 6, 2019 (General Issues Supplement); "Vertical Metal File Cabinets from the People's Republic of China: Petitioner's Supplement to Volume III Relating to China Countervailing Duties," dated May 6, 2019 (CVD Supplement); "Vertical Metal File Cabinets from the People's Republic of China – Petitioner's 2nd Supplement to Volume I Relating to General Issues," dated May 9, 2019 (Second General Issues Supplement); and, "Vertical Metal File Cabinets from the People's Republic of China – Petitioner's 3rd Supplement to Volume I Relating to General Issues," dated May 16, 2019 (Third General Issues Supplement).

⁴ See "Determination of Industry Support for the Petition" section, *infra*.

Period of Investigation

Because the Petition was filed on April 30, 2019, the period of investigation (POI) is January 1, 2018, through December 31, 2018.

Scope of the Investigation

The merchandise covered by this investigation is file cabinets from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁵ As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).⁶ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,⁷ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on June 10, 2019, which is 20 calendar

⁵ See General Issues Supplement; *see also* May 8, 2019 Memorandum; Second General Issues Supplement; May 15, 2019 Memorandum; Third General Issues Supplement.

⁶ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

⁷ See 19 CFR 351.102(b)(21) (defining "factual information").

days from the signature date of this notice.⁸ Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 20, 2019, which is 10 calendar days from the initial comment deadline.⁹

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).¹⁰ An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

⁸ Because the deadline falls on a Sunday (*i.e.*, June 9, 2019), the deadline becomes the next business day (*i.e.*, June 10, 2019).

⁹ See 19 CFR 351.303(b).

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified China of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.¹¹ China did not request consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must

¹¹ See Commerce’s Letter, “Countervailing Duty Petition on Vertical Metal File Cabinets from the People’s Republic of China,” dated May 15, 2019.

apply the same statutory definition regarding the domestic like product,¹² they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹³

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁴ Based on our analysis of the information submitted on the record, we have determined that file cabinets, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁵

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in the Appendix to this notice. To

¹² See section 771(10) of the Act.

¹³ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁴ See Volume I of the Petitions at 11-13; *see also* General Issues Supplement at 11-13 and Exhibits GEN-Supp-1 through GEN-Supp-4.

¹⁵ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Initiation Checklist: Vertical Metal File Cabinets from the People's Republic of China (CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering File Cabinets from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

establish industry support, the petitioner provided its own 2018 production of the domestic like product, as well as the 2018 production of the supporters of the Petition.¹⁶ The petitioner compared the total production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.¹⁷ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.¹⁹ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²⁰ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²¹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²² Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

¹⁶ See Volume I of the Petition at 2-3 and Exhibit GEN-3.

¹⁷ See *id.*; see also General Issues Supplement, 14-15 and Exhibit GEN-Supp-5.

¹⁸ See Volume I of the Petition at 2-3 and Exhibit GEN-3; see also General Issues Supplement at 14-15 and Exhibit GEN-Supp-5. For further discussion, see CVD Initiation Checklist at Attachment II.

¹⁹ See CVD Initiation Checklist at Attachment II.

²⁰ See *id.*; see also section 702(c)(4)(D) of the Act.

²¹ See CVD Initiation Checklist at Attachment II.

²² *Id.*

Injury Test

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²³

The petitioner contends that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a decline in the domestic industry’s production, capacity utilization, domestic shipments, employment variables, and financial performance.²⁴ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁵

²³ See Volume I of the Petition at 13-14 and Exhibits GEN-7 and GEN-10.

²⁴ *Id.* at 10, 13-23 and Exhibits GEN-1, GEN-7, and GEN-10 through GEN-14; *see also* General Issues Supplement at 15-16 and Exhibit GEN-Supp-5.

²⁵ See CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Vertical Metal File Cabinets from the People’s Republic of China (Attachment III).

Initiation of CVD Investigation

Based on the examination of the Petition on file cabinets from China, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of file cabinets from China benefit from countervailable subsidies conferred by the Government of China. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on each of the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named 62 companies in China as producers/exporters of file cabinets.²⁶ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of file cabinets from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the "Scope of the Investigation," in the Appendix.

²⁶ *See* Petition Volume I at Exhibit GEN-8.

On May 16, 2019, Commerce released CBP data for imports of file cabinets from China under APO to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.²⁷ We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of China via ACCESS.

Furthermore, to the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

²⁷ See Memorandum, “Countervailing Duty Investigation of File Cabinets from: Release of U.S. Customs and Border Protection Data,” dated May 16, 2019.

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of file cabinets from China are materially injuring or threatening material injury to a U.S. industry.²⁸ A negative ITC determination will result in the investigation being terminated.²⁹ Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce’s regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁰ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³¹ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the

²⁸ See section 733(a) of the Act.

²⁹ *Id.*

³⁰ See 19 CFR 351.301(b).

³¹ See 19 CFR 351.301(b)(2).

type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³² Parties must use the certification formats

³² See section 782(b) of the Act.

provided in 19 CFR 351.303(g).³³ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: May 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary

for Enforcement and Compliance.

³³ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

Appendix

Scope of the Investigation

The scope of this investigation covers freestanding vertical metal file cabinets containing two or more extendable file storage elements and having an actual width of 25 inches or less.

The subject vertical metal file cabinets have bodies made of carbon and/or alloy steel and or other metals, regardless of whether painted, powder coated, or galvanized or otherwise coated for corrosion protection or aesthetic appearance. The subject vertical metal file cabinets must have two or more extendable elements for file storage (e.g., file drawers) of a height that permits hanging files of either letter (8.5" x 11") or legal (8.5" x 14") sized documents.

An "extendable element" is defined as a movable load-bearing storage component including, but not limited to, drawers and filing frames. Extendable elements typically have suspension systems, consisting of glide blocks or ball bearing glides, to facilitate opening and closing.

The subject vertical metal file cabinets typically come in models with two, three, four, or five-file drawers. The inclusion of one or more additional non-file-sized extendable storage elements, not sized for storage files (e.g., box or pencil drawers), does not remove an otherwise in-scope product from the scope as long as the combined height of the non-file-sized extendable storage elements does not exceed six inches. The inclusion of an integrated storage area that is not extendable (e.g., a cubby) and has an actual height of six inches or less, also does not remove a subject vertical metal file cabinet from the scope. Accessories packaged with a subject vertical file cabinet, such as separate printer stands or shelf kits that sit on top of the in-scope vertical file cabinet are not considered integrated storage.

“Freestanding” means the unit has a solid top and does not have an open top or a top with holes punched in it that would permit the unit to be attached to, hung from, or otherwise used to support a desktop or other work surface. The ability to anchor a vertical file cabinet to a wall for stability or to prevent it from tipping over does not exclude the unit from the scope.

The addition of mobility elements such as casters, wheels, or a dolly does not remove the product from the scope. Packaging a subject vertical metal file cabinet with other accessories, including, but not limited to, locks, leveling glides, caster kits, drawer accessories (e.g., including but not limited to follower wires, follower blocks, file compressors, hanger rails, pencil trays, and hanging file folders), printer stand, shelf kit and magnetic hooks, also does not remove the product from the scope. Vertical metal file cabinets are also in scope whether they are imported assembled or unassembled with all essential parts and components included.

Excluded from the scope are lateral metal file cabinets. Lateral metal file cabinets have a width that is greater than the body depth, and have a body with an actual width that is more than 25 inches wide.

Also excluded from the scope are pedestal file cabinets. Pedestal file cabinets are metal file cabinets with body depths that are greater than or equal to their width, are under 31 inches in actual height, and have the following characteristics: (1) an open top or other the means for the cabinet to be attached to or hung from a desktop or other work surface such as holes punched in the top (i.e., not freestanding); or (2) freestanding file cabinets that have all of the following: (a) at least a 90 percent drawer extension for all extendable file storage elements; (b) a central locking system; (c) a minimum weight density of 9.5 lbs./cubic foot; and (d) casters or leveling glides.

“Percentage drawer extension” is defined as the drawer travel distance divided by the inside depth dimension of the drawer. Inside depth of drawer is measured from the inside of the drawer face to the inside face of the drawer back. Drawer extension is the distance the drawer travels from the closed position to the maximum travel position which is limited by the out stops. In situations where drawers do not include an outstop, the drawer is extended until the drawer back is 3-1/2 inches from the closed position of inside face of the drawer front. The “weight density” is calculated by dividing the cabinet’s actual weight by its volume in cubic feet (the multiple of the product’s actual width, depth, and height). A “central locking system” locks all drawers in a unit.

Also excluded from the scope are fire proof or fire-resistant file cabinets that meet Underwriters Laboratories (UL) fire protection standard 72, class 350, which covers the test procedures applicable to fire-resistant equipment intended to protect paper records.

The merchandise subject to the investigation is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.10.0020. The subject merchandise may also enter under HTSUS subheadings 9403.10.0040, 9403.20.0080, and 9403.20.0090. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

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